

The Honorable Robert S Lasnik

JAMES MCDONALD
14840 119th PL NE
Kirkland, WA 98034
Phone (425) 210-0614
In Pro Per

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In Re:)	NO.: C10-1952RSL
)	
)	
JAMES MCDONALD)	
Plaintiff)	
v)	Plaintiff's Second Motion to Compel to
ONEWEST BANK, FSB, et al.,)	Produce
Defendants.)	NOTICE DATE: February 17, 2012
)	

COMES NOW, Plaintiff James McDonald, pursuant to Federal Rule of Civil Procedure 37, and submits this Second Motion to Compel to Produce against Defendants OneWest, MERS and Northwest Trustee Services.

I. FACTS

1.1 On February 25, 2011, the Court Ordered the Initial Disclosures, joint Status Report and Early Settlement (Docket #40).

1.2 On March 21, 2011 Plaintiff and Counsel for the Defense met via telephonic conference and agreed to the Joint Status Report submitted on March 23rd by Plaintiff. In that conference both parties agreed in Section 5(d), "The parties agree to act reasonably and in good faith when propounding and responding to discovery requests. The parties do not anticipate at this time that any party will fail to cooperate in discovery". This document was electronically signed by both Plaintiff and counsel for the Defense.

1.3 On March 29, 2011, the Court issued a Minute Order Setting Trial Date and Related Dates including an order issuing an end to discovery proceedings on August 7, 2011.

1.4 On April 4, 2011, Plaintiff electronically served upon the Counsel for Defendants OneWest, MERS and Northwest Trustee Services the first request to produce (Exhibit A) as required by Federal Civil Rules of Procedure 34(b). Plaintiff understood by Fed. Civ. Rules of Procedure 34(b)(2)(A) that he must wait 30 days before taking any further action in regards to this request.

Motion to Compel to Produce

-1-

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1 **1.5** On May 5, 2011, Plaintiff submitted the First Motion to Compel to Produce the documentation
2 requested in the First Request to Produce. On June 13, 2011 the Court denied the motion based on a
3 procedural error by the Plaintiff and ordered the parties to communicate further.

4 **1.6** Between May 26, 2011 and July 11, 2011 the Plaintiff communicated with the counsel for the
5 defense, Miss Heidi Buck, repeatedly to attempt to obtain the requested documentation from the First
6 Request to Produce (Declaration of James McDonald). The defendants produced some of the documents
7 during that time, but not all of it. Miss Buck continued to state she was waiting to hear from her clients or
8 her clients were looking into providing the documentation. Upon termination of the settlement conferences
9 Plaintiff again reached out to Miss Buck and again received the same response that she was checking with
10 her clients. Plaintiff made a final attempt to communicate with Miss Buck on January 3rd, 2012 at 1:19pm
11 but never received a response.

12 **II. Argument**

13 **2.1** Defense has shown through their lack of production or objection to the Request to Produce in the
14 time allotted by Rule 34(b)(2)(A) that they are not acting in good faith as Plaintiff and Defense
15 agreed to in the Joint Status Report submitted on March 23rd, 2011.

16 **2.2** Defense has knowingly and willfully delayed the process of the action before the Court by failing to
17 provide the documentation or provide an objection, thereby creating additional burden to the
18 Plaintiff in having to file this Motion and to the Court by necessitating the Court become involved in
19 this matter.

20 **2.3** As Defense has failed to provide any objection in the time allotted by Rule 34(b)(2)(A) to the
21 Request to Produce it appears to Plaintiff that there can be no objection heard in requiring the
22 defense to produce all documentation Plaintiff has requested.

23 **Conclusion**

24 **WHEREFORE**, Plaintiff moves the Court to order the following:

- 25 1. The Court Order that any and all proceedings requested by the Defense and/or any parties not
26 affiliated with the Plaintiff be stayed until the documentation has been produced as allowed by Rule
27 37(b)(2)(A)(iv).
- 28 2. The Court order Defendants OneWest, MERS and Northwest Trustee Services to produce all
documentation requested in the First Request to Produce (Exhibit A) as the Defendants singularly and
together failed to object to the request in the time allotted under Rule 34.

29 **Proposed Order**

30 A proposed order will be submitted together with this Motion to Compel to Produce.

1 **Dated February 3, 2012**

4 /s/ James McDonald -
5 **James McDonald**
6 **Pro Se**

6 **Certificate of Service**

7 I hereby certify that on the 3rd day of February, 2012 the foregoing was electronically filed with the
8 Clerk of the Court using the ECF system, which sent notification and therefore served the following:
9 Heidi Buck
10 Routh Crabtree Olsen
11 13555 SE 36th ST Suite 300
12 Bellevue, WA 98006

11 /s/ James McDonald -
12 **James McDonald**
13 **Pro Se**